

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

JOHN SLOAN,

Petitioner,

v.

Case No. 08-C-817

UNITED STATES OF AMERICA,

Respondent.

ORDER

John Sloan filed this petition pursuant to 28 U.S.C. § 2255, asserting that his incarceration is unconstitutional. He asserted his guilty plea was obtained without effective assistance of counsel because his indictment was duplicitous. He has now filed a notice of appeal. Before an appeal may be taken, a certificate of appealability (“COA”) must issue. The COA may issue only if the applicant makes a substantial showing of the denial of a constitutional right. 28 U.S.C. § 2253(c)(2). The standard for making a “substantial showing” is whether reasonable jurists could debate whether the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further. *Barefoot v. Estelle*, 463 U.S. 880, 893 & n.4 (1983).

In my order dismissing the case, I concluded that there was no duplicity of charges because the indictment charged a single count of conspiracy. As such, there was no ineffective assistance of counsel. That is not a conclusion that I believe reasonable jurists could debate. Accordingly, the COA will be denied.

THEREFORE, IT IS ORDERED that a certificate of appealability is **DENIED**.

Dated this 10th day of November, 2008.

s/ William C. Griesbach
William C. Griesbach
United States District Judge